



# California Regional Water Quality Control Board

## Santa Ana Region



Linda S. Adams  
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Environmental Protection

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Arnold Schwarzenegger  
Governor

February 9, 2009

Jian Torkan  
ICO Real Estate Group  
4221 Wilshire Boulevard, #240  
Los Angeles, CA 90010 – 3512

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION  
FOR THE SAN BERNARDINO COUNTY TRANSITION ASSISTANCE DEPARTMENT  
PARKING LOT, CITY OF SAN BERNARDINO, SAN BERNARDINO COUNTY (ACOE  
REFERENCE NO. SPL – 2008 – 01100 – SLP)**

Dear Mr. Torkan:

On September 10, 2008, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification"), submitted on your behalf by Thatcher Engineering & Associates, Inc., for the construction of a parking lot in the City of San Bernardino. This letter responds to your request for certification that the proposed project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) and subsequent Basin Plan amendments ("Basin Plan"):

**Project Description:** Construction of a parking lot over Warm Creek adjacent to the Transitional Assistance Department building<sup>1</sup>. The Creek will be enclosed within an arched culvert with an unpaved invert. The culvert will be operated and maintained pursuant to a maintenance agreement with the City of San Bernardino. The site is located near the southwest corner of 4<sup>th</sup> Street and Waterman Avenue within an un-sectioned portion of Township 1 South, Range 4 West, of the U.S. Geological Survey *San Bernardino, California*, 7.5-minute topographic quadrangle map (34 deg. 37 min. 19 sec. N/ -117 deg. 30 min. 25 sec. W).

**Receiving water:** Warm Creek.

**Fill area:** 0.45 acre of permanent impact to an ephemeral drainage (562 linear feet).

<sup>1</sup> An outfall for the TAD building was Certified on February 27, 2008.



Dredge/Fill volume: N/A

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 29

You have proposed to mitigate water quality impacts as described in your Certification application and subsequent submittals. The proposed mitigation is summarized below:

**Onsite Water Quality Standards Mitigation Proposed:**

- Nuisance flow and 'first-flush' discharges from the project will be treated using a bio-filter located at the southwest corner of the parking lot. The bio-filter will be operated and maintained by the property owner.
- Additional site-specific best management practices ("BMPs") are specified in the site's Storm Water Pollution Prevention Plan ("SWPPP") and Water Quality Management Plan ("WQMP").

**Offsite Water Quality Standards Mitigation Proposed:**

- No off-site water quality standards mitigation is proposed.

Should the proposed project impact state- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Game will ensure those impacts are mitigated to an acceptable level. Appropriate Best Management Practices will be implemented to reduce construction-related impacts to Waters of the State. This project is over one acre. Therefore, coverage under the State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08 DWQ, is required, as is development of a SWPPP, to control the discharge of pollutants from the project site.

You have applied for a Nationwide Permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. You have applied for a Streambed Alteration Agreement with the California Department of Fish and Game. Pursuant to the California Environmental Quality Act (CEQA), the City of San Bernardino adopted a Mitigated Negative Declaration for the parking lot on January 8, 2009. Pursuant to California Code of Regulations, Title 14, Section 15096, subdivision (f), the Regional Board must consider the environmental effects of the project as described in the associated negative declaration prior to reaching a decision on the project. The Regional Board has considered the City's Mitigated Negative Declaration in the issuance of this Certification and finds that changes or alterations have been required, or incorporated into the proposed project, which avoid impacts to water quality or mitigate them to a less than significant level.



**This 401 Certification is contingent upon the execution of the following conditions:**

1. This Certification is conditioned upon the construction of all storm water treatment facilities as proposed. All structural storm water treatment facilities must be constructed and operational prior to the authorized use of the parking lot.
2. Regional Board staff and other authorized representatives shall be allowed:
  - a. Entry upon premises where storm water treatment facilities are located, or where records are kept under the requirements of this Certification and applicable waste discharge requirements;
  - b. Access to copy any records that are kept under the requirements of this Certification and applicable waste discharge requirements;
  - c. To inspect any facility, equipment (including monitoring and control equipment), practices, or operations related to the treatment of storm water runoff from the project site; and
  - d. To photograph, sample and monitor for the purpose of assuring compliance with this Certification and applicable waste discharge requirements.
3. This Certification and any subsequent amendments must be maintained on site as a denoted element of any project SWPPP or WQMP.
4. This Certification is transferable only upon written notice to the Executive Officer. The notice must include written acknowledgement of this Certification by the transferee's authorized representative.
5. The applicant must comply with the requirements of the Clean Water Act section 404 permit.

**Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:**

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

If the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality



problem, the Regional Board may require the applicant to submit a report of waste discharge and obtain Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the holder of any permit or license subject to this certification shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification. Violations of the conditions of this certification may subject the applicant to civil liability pursuant to Water Code section 13350 and/or 13385.

This letter constitutes an After-the-Fact Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 200-0017-DWQ is available at [www.swrcb.ca.gov/resdec/wqorders/2003/wqo/wqo2003-0017.pdf](http://www.swrcb.ca.gov/resdec/wqorders/2003/wqo/wqo2003-0017.pdf)

Should there be any questions, please contact Adam Fischer at (951) 320-6363, or Mark Adelson at (951) 782-3234.

Sincerely,



for GERARD J. THIBEAULT  
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Shannon Pankratz  
State Water Resources Control Board, OCC – David Rice  
State Water Resources Control Board, DWQ – Water Quality Certification Unit  
California Department of Fish and Game, Ontario Office – Michael Flores  
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Eric Raffini and David Smith

